Ontario Energy Board | Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2026-0178

IMPALA CANADA LIMITED

Motion to Review and Vary Decision and Order In EB-2025-0286

BEFORE: Julia McNally
Presiding Commissioner

Damien A. Côté
Commissioner

James Sidlofsky
Commissioner

October 8, 2026

Ontario Energy Board | Commission de l'énergie de l'Ontario

TABLE OF CONTENTS

1 OVERVIEW 1

2 CONTEXT AND PROCESS 2

3 DECISION ON THE MERITS 4

3.1 DID THE ORIGINAL PANEL MAKE A CLEAR AND MATERIAL ERROR IN ITS INTERPRETATION OF PARAGRAPH 99(1)1? 5

3.2 DID THE ORIGINAL PANEL MAKE A CLEAR AND MATERIAL ERROR IN ITS INTERPRETATION OF PARAGRAPH 99(1)2? 13

3.3 IS IT NECESSARY TO CONSIDER PUBLIC INTEREST AND SUBSECTION 99(5)? 16

4 CONCLUSION 18

5 ORDER 19

1 OVERVIEW

Impala Canada Ltd. brought a motion to the OEB to review the OEB's May 21, 2026, Decision denying it's application for authority to expropriate permanent corridor easements on two parcels of land owned by North Star Forestry Ltd. Impala stated that it required expropriation to maintain Impala's existing transmission line, which was built in 1996, to support their Lac Des Iles Mine. North Star intervened in the motion.

The OEB denied Impala's application on two grounds:

(a) The approvals and permits authorizing the construction and operation of Impala's line received prior to the enactment of the Ontario Energy Board Act did not constitute leave to construct under a predecessor of Part VI of the OEB Act for the purposes of paragraph 99(1)1 of the OEB Act.
(a) Impala's intention to indefinitely maintain their line did not constitute an intention to "reinforce" the line for the purposes of paragraph 99(1)2 of the OEB Act.

Impala argued that the OEB's denial of their application based on Impala's ineligibility under paragraphs 99(1)1 and 2 amount to material and clearly identifiable errors of law resulting from the overly narrow interpretation of subsection 99(1) that is inconsistent with the statutory objectives of the Act and modern principles of statutory interpretation. It also alleged that the Decision results in absurd consequences and the creation of an excluded class of pre-existing transmission line owners.

North Star opposed the motion arguing that the Decision is correct in law and well-supported by the record. It stated that the decision reflected the fact that, through section 99, the legislature defined the categories of individuals who are eligible to seek authority to expropriate. Parties like Impala, who do not have leave to construct from the OEB or a predecessor and have no demonstrated intention to construct, expand or reinforce a transmission line, do not fall within those categories.

The issue before the OEB is whether the Original Panel made a clear and material error in its interpretation of paragraphs 99(1)1 and 2 of the Act. The OEB finds that Impala has not demonstrated an error law or jurisdiction in the Original Decision and confirms the Original Decision. The motion is denied.

2 CONTEXT AND PROCESS

On June 10, 2026, Impala filed a motion to review the Decision denying its application to expropriate interests in two parcels of land, finding that Impala did not satisfy the requirements of paragraphs 99(1)1 and 99(1)2 of the Act and was therefore ineligible to apply for expropriation.

Impala owns and operates a transmission line that serves the Lac Des Iles Mine, located approximately 130 km northwest of Thunder Bay. The line does not serve any other customers. Impala applied under section 99 of the Act for an order granting approval to expropriate interest in land owned by North Star Forestry Ltd., which was subject to an easement agreement. The stated rationale for the expropriation is to ensure continued access to the transmission line for the safe and productive operation and potential closure of the mine.

The transmission line was constructed in 1996 by North American Palladium Ltd., a predecessor to Impala, and has been in operation since that time. At the time the line was built, the OEB Act did not include provisions related to leave to construct for electricity transmission lines. With the introduction of the Act in 1998, people intending to construct, expand or reinforce a transmission line were required to obtain leave to do so, unless exempted by the Act or section 6.2 of O. Reg. 161/99.

According to the record, in 1996, Abitibi-Price Inc., the predecessor landowner, entered into a letter agreement with North American Palladium Ltd. setting out the terms and conditions for the grant of an easement across Abitibi-Price's lands to construct and maintain the 115 kV transmission line for the mine. The letter had a 25-year term and the easement expired in 2024.

North Star, the owner of the land when the motion was filed, intervened in the proceeding. On June 16, 2026, North Star sent a letter to the OEB requesting that the OEB provide North Star an opportunity to make submissions on the threshold question under Rule 43 of the OEB's *Rules of Practice and Procedure*, prior to any consideration of the merits of Impala's motion. In the Notice of Hearing and Procedural Order No. 1, issued on July 13, 2026, the OEB determined that it would not hear the threshold question pursuant to Rule 43 of the *Rules of Practice and Procedure*, and would proceed directly to a consideration of the merits.

Additionally, the OEB denied Impala's request for a stay. As the OEB chose to proceed directly with the merits in this case, the procedural timeline was such that any decision on the stay would likely be issued on the same schedule as a decision on the merits.

Addressing the stay separately would therefore have introduced unnecessary delay into the process.

On August 28, 2026, the OEB received a letter from counsel for North Star stating that North Star had completed the sale of the Subject Lands to Whisky Jack Forests LLC. Further, as part of the letter, Whisky Jack requested to be approved as a late intervenor in the proceeding and stated that it accepts the record, will not be seeking an award of costs, and adopts all materials previously filed by North Star. The OEB issued a letter on September 14, 2026, approving Whisky Jack as an intervenor in the proceeding.

3 DECISION ON THE MERITS

Impala's motion is brought under Rule 42 of the OEB's *Rules of Practice and Procedure*. Impala relies on Rule 42.01(a)i, arguing that the Original Panel "made a material and clearly identifiable error of fact, law or jurisdiction."[1]

Impala alleges that the OEB's decision that Impala is ineligible to apply for expropriation under paragraphs 99(1)1 and 2 represent a material and clearly identifiable error of law. The error stems from the OEB's overly narrow interpretation of subsection 99(1) that is inconsistent with the statutory objectives of the OEB, which include regulating the electricity sector in a manner that supports economic growth, consistent with the policies of the Government of Ontario.

In responding to Impala's motion, this Decision considers three issues:

- Issue 1: Did the OEB make a clear and material error in its interpretation of paragraph 99(1)1 or
- Issue 2: Did the OEB make a clear and material error in its interpretation of paragraph 99(1)2?
- Issue 3: Is it necessary to consider public interest under subsection 99(5)?

The following sections summarize the law, parties' submissions, and the OEB's findings on each issue. To avoid duplication, the OEB primarily addresses Impala's arguments related to absurdity in issue 1.

[1] Notice of Motion, para. 15a, p. 6

3.1 Did the Original Panel make a clear and material error in its interpretation of paragraph 99(1)1?

Original Decision

The Original Panel held that Impala is not eligible to seek expropriation under paragraph 99(1)1 of the Act because it did not obtain leave to construct its transmission line under the Act or under a predecessor legislative regime.

Paragraph 99(1)1 provides that a person may apply for expropriation where it has leave i.e., leave to construct under Part VI of the Act or a predecessor to Part VI. The Act including Part VI came into force in 1998, after the construction of Impala's transmission line. Leave under Part VI therefore could not have been granted.

The Original Panel determined that the predecessor to Part VI was the *Power Corporation Act*, which related only to lines constructed by Ontario Hydro. Because those provisions applied only to Ontario Hydro, they were not available to Impala's predecessor.

The Original Panel rejected the argument that permits issued to Impala's predecessor for construction of the line by the Ministry of Natural Resources in the 1990s could be treated as predecessor approval. The evidence did not establish that those permits authorized transmission line construction in a manner comparable to the leave to construct regime under the *Power Corporation Act*. The Original Panel concluded that the reference to predecessor legislation in paragraph 99(1)1 is a transitional provision intended to preserve expropriation rights for transmission facilities previously approved for Ontario Hydro and its successors. As neither Impala nor any predecessor company obtained such approval, it does not meet the eligibility requirements to apply for expropriation under paragraph 99(1)1.

Submissions

Through its argument-in-chief, Impala argued that the Original Decision contained a material and identifiable error by adopting a narrow interpretation of paragraph 99(1)1 of the Act. Impala argued that the OEB did not apply the well-established principles of statutory interpretation endorsed by the Supreme Court of Canada when it found that reference to the predecessor leave requirement in paragraph 99(1)1 was limited to transmission lines authorized under the *Power Corporation Act*.

The Original Decision, in Impala's submission, does not adopt a large and liberal interpretation of the Statute. Impala argues that the wording of the statute is intentionally

broad to capture variances in how infrastructure was authorized. This, it argued, is reinforced by the legislature's intent to bring all electrical infrastructure under the regulation of the OEB through a comprehensive licensing regime.

Impala submitted the Original Panel erred when it focused on the "closest predecessor" rather than taking a purposive approach given that there was no formal regulatory regime for private transmitters to seek leave to construct. Impala believes that the authorizations issued by the Ministry of Natural Resources prior to construction of the transmission line[2] provide sufficient governmental authorization in accordance with the regulatory regime at the time and should make it eligible to apply for expropriation authority under paragraph 99(1)1 of the Act.

Impala also submitted that the phrase "leave under … a predecessor of" was drafted broadly on purpose and was not meant to limit eligibility to facilities authorized under a specific historical statute or only to successors of Ontario Hydro. Impala submitted that if this is what the legislature had intended, it would have drafted the legislation clearly stating this.

Impala further submitted that the Original Decision found it ineligible to apply for authority to expropriate under paragraph 99(1)1 of the Act, while simultaneously acknowledging that no formal regulatory regime existed for the construction of private transmission lines. According to Impala, this creates an arbitrary class of transmitters that are excluded from the relief available under section 99. Specifically, existing privately owned transmission lines have fewer rights than new infrastructure. Impala also noted that it is subject to the OEB's licensing framework and is connected to the IESO-controlled grid. Given that it forms part of the modern regulatory scheme, Impala argued that it should not be excluded from the remedial provisions of section 99.

Impala argued that Original Panel's Decision leads to absurd consequences that are inconsistent with the principles articulated in *Rizzo Shoes*[3]. It further submitted that these findings materially affect such transmitters and their customers by giving landowners "non-market driven leverage opportunities".[4] In addition, Impala argued that the outcome is inconsistent with the OEB's statutory objectives of promoting economic

[2] Impala states that these authorizations include a land use permit for the right of way, two work permits for forestry and construction of a powerline, and two licenses to harvest Crown forest resources

[3] *Rizzo & Rizzo Shoes Ltd. (Re),* 1998 CanLII 837 (SCC), [1998] 1 SCR 27

[4] Argument-in-Chief, para. 31, p. 13

efficiency and supporting economic growth in a manner consistent with the policies of the Government of Ontario.

North Star submitted that the Original Decision correctly interpreted paragraph 99(1)1 and does not contain a "materially and clearly identifiable error".[5] North Star submitted that Impala's argument, namely, that obtaining governmental authorizations other than that of the *Power Corporation Act* should entitle it to apply for expropriation authority, is without merit. North Star argued that paragraph 99(1)1 refers specifically to leave under Part VI of the Act, therefore a predecessor of Part VI must serve the same or similar function. In this case, it must refer to providing leave to construct or a comparable authorization.

North Star argued that any large and liberal interpretation must be anchored in the actual text of the statute. Impala, in its view, invites the OEB to ignore the fact that the Legislature did not make anyone with permits eligible to apply under subsection 99(1), but only "a predecessor of *this* part". The Original Decision was correct to anchor its interpretation in the language of the statute.

North Star supported the findings in the Original Decision that the *Power Corporation Act* is the predecessor, as it was the only pre-1998 legislative regime which provided a similar function to granting leave to construct authority to electricity transmission facilities. North Star noted that the OEB reached its conclusion after reviewing evidence and submissions regarding Ontario's pre-1998 framework. North Star noted that Impala did not provide evidence demonstrating that any other legislative framework provided a comparable authorization process.

North Star further stated that the permits obtained from the Ministry of Natural Resources by Impala's predecessors are "not the equivalent of the legislative authorization to construct a transmission line".[6] North Star supported the OEB's findings in the Original Decision that these permits are not the equivalent of the approval regime under the *Power Corporation Act*.

North Star rejected Impala's claim that the OEB did not apply appropriate principles of statutory interpretation in the Original Decision, stating that the Legislature's choice to use wording specifically referring to Part VI of the Act implies its intent that not all

[5] North Star's Submission, para. 51, p. 15
[6] North Star's Submission, para. 58, p. 17

permits provide eligibility to apply for expropriation authority. North Star argued that this is consistent with the previous legislation as prior to the Act being enacted the only legislative method allowing for the construction of electricity transmission facilities was the *Power Corporation Act.* North Star further argues that there is a direct legislative line from the *Power Corporation Act* to the Act, and that Bill 35[7] repealed the *Power Corporation Act* and transferred its leave to construct and expropriation functions to the Act. As such, it argued, paragraph 99(1)1 was correctly interpreted by the OEB as a transitional provision.

North Star argued that the Original Decision does not produce an absurd consequence, as stated by Impala, since granting authority to expropriate private property against a landowner's wishes is an extraordinary power and the Act sets limits on the circumstances on which it is available. Further, North Star stated that the consequence Impala describes is not absurd, since Impala, as a private company, has other options available to it such as commercial negotiation and proceedings in civil courts. North Star believes that Impala is inappropriately using the OEB's process to avoid its contractual obligations and is seeking a more favourable outcome than what it could achieve through commercial negotiation.

In its reply submission, Impala disagreed with North Star's interpretation of the legislation stating that legislature's decision not to reference the *Power Corporation Act,* when it was the only statute to provide formal authorization for the construction of transmission lines prior to 1998, indicates the intent to bring all electrical infrastructure under the OEB's purview and provide access to remedial provisions, such as section 99 of the Act.

Impala disagreed with North Star's view that the findings in the Original Decision do not lead to any absurd consequences. Impala argued that while alternate avenues to secure land interests exist, in this case, expropriation is the only method that meets Impala's requirements. Under the current regulatory regime, electricity transmission lines which are exempt from the requirement to receive leave to construct are still eligible to apply for expropriation relief under section 99 of the Act. Impala argued that if North Star's arguments and the OEB's Original Decision are correct, this same relief is not afforded to existing transmission lines that did not receive leave to construct under the *Power Corporation Act*.

[7] *Energy Competition Act, 1998*, S.O. 1998, c. 15, Schedule B.

Findings

The OEB finds that the Original Decision does not contain a clear and material error in its interpretation of paragraph 99(1)1 of the Act. The Original Decision is consistent with the established approach to statutory interpretation, and it does not result in an absurd consequence.

Section 99 is in Part VI of the Act. Part VI creates a framework for the construction, expansion and reinforcement of electricity transmission and distribution lines and hydrocarbon pipelines. Section 99 authorizes the OEB to grant leave to expropriate land required for a "work", including an electricity transmission line. Such authority may be sought by a person who has obtained leave to construct the work under section 92 of the Act or is exempt from obtaining that leave. The relevant portion of the Act is shown below:

> **99** (1) The following persons may apply to the Board for authority to expropriate land for a work:
>
> 1. Any person who has leave under this Part or a predecessor of this Part.
>
> 2. Any person who intends to construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection and who is exempted under this Act from the requirement to obtain leave.

Impala argues that the Original Panel made an error by interpreting paragraph 99(1)1 as applying only to leave to construct authorizations issued to Ontario Hydro under the *Power Corporation Act*. It argues that this is inconsistent with the well-established principles of statutory interpretation endorsed by the Supreme Court of Canada. It also points to the *Legislation Act* which prescribes that all legislation in Ontario be interpreted as remedial and be given "such fair, large and liberal interpretation as best ensures the attainment of its objects."[8]

While the OEB recognizes this well-established approach to statutory provisions, the OEB also notes that expropriation provisions have historically been interpreted narrowly, and ambiguity is generally resolved in favour of the affected property owners.

[8] *Legislation Act, 2006*, SO 2006, c 21, Sch F, s. 64

This cautious approach is because expropriation is one of the "ultimate exercises of government authority".[9]

Impala argues that the plain text of paragraph 99(1)1 does not prescribe specific statutes or frameworks to qualify for eligibility to expropriate under a predecessor to Part VI. It argues that the Original Panel made a mistake when it did not include Ministry of Natural Resources authorizations as "predecessors to this Part".

The Original Panel found that a "predecessor of this part" needed to perform the same function, i.e. provide leave to construct an electricity transmission line. The Original Panel found, based on the information before it, that for the purposes of paragraph 99(1)1 the predecessor to Part VI of the OEB Act, as it relates to granting leave to construct electricity transmission lines, was the *Power Corporation Act*. The Original Panel did not accept that the permits obtained from the Ministry of Natural Resources around 1996 are a predecessor to the leave requirements under Part VI. The Original Panel found that the permits were not the equivalent of the approval regime set out in the *Power Corporation Act*. In the OEB's view, the Original Panel's interpretation is rooted in the text, consistent with objectives of Part VI of the Act, and supported by legislative history.

Impala's central argument is that the Original Panel's Decision created

> an arbitrarily defined class of transmission entities… that are excluded from accessing the remedial objects of section 99 based on the nature of the authorizations they received before there were formal regulatory procedures in place.[10]

The OEB accepts that the Act does not provide an expropriation pathway for owners of pre-existing lines that do not have leave to construct and who simply want to maintain the line, but not construct, expand, or reinforce a line. In the OEB's view, this is not an arbitrary class. The purpose of Part VI of the Act is to govern *construction, expansion* and *reinforcement* of transmission and distribution lines and pipelines. Its purpose is not to govern maintenance of transmission lines. However, even if one is persuaded that this is an arbitrary group, the consequence flows from the words of the Act and not from the Original Panel's interpretation of text of the Act. As argued by North Star the "text of

[9] *Toronto Area Transit Operating Authority v. Dell Holdings Ltd.,* 1997 CanLII 400 (SCC), [1997] 1 SCR 32, <https://canlii.ca/t/1fr5r>, para. 20; see also EB-2010-0023 and EB-2013-0268
[10] Argument-in-Chief, para. 31, p. 13

the provision remains the anchor of the interpretive exercise"[11]. The OEB is bound to interpret the statute as it is written, not as parties wish it to be written.

In this regard, the OEB acknowledges that its objectives in carrying out its responsibilities under the Act or any other act in relation to electricity, shall be guided by objectives that include (among others):

> 2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.
>
> 2.1 To regulate the electricity sector in a manner that supports economic growth, consistent with the policies of the Government of Ontario.[12]

However, this does not mean that the OEB may read into the Act rights that do not exist simply for the purpose of promoting economic growth.

The OEB also observes that Impala's interpretation would create a new distinction in the treatment of privately owned transmission lines. If Impala's interpretation of the Act were followed it would mean that owners of private transmission lines built before 1998 when the Act came into force could seek authority to expropriate purely for maintenance activities under paragraph 99(1)1, while owners of private transmission lines built after 1998, who are exempt from the need to seek leave to construct, could not seek authority to expropriate for maintenance (as they would only be eligible to apply for leave to expropriate under paragraph 99(1)2, which would require construction, expansion or reinforcement of a line or the making of an interconnection). On its face, this appears to create an arbitrary distinction.

The OEB disagrees with Impala's submission that the Original Decision leads to an absurd consequence. The true consequence of the Original Decision is that the OEB, a regulator, does not interfere in a private commercial dispute using its authority to expropriate. Private parties are expected to resolve their disputes over land rights through negotiation or in the courts; this is not an "absurd consequence" as Impala suggests, it is the common remedy in such circumstances.

[11] North Star's Submission, para. 65, p. 18
[12] See Section 1 of the Act.

As noted by North Star, the result of the Original Decision is to leave Impala in the same position that "most parties are in when they want rights over another party's property".[13] This is not an "absurd consequence".

Were the OEB to grant Impala's motion, it would result in a use of expropriation powers which is not "strictly construed"[14]. Specifically, Impala seeks a permanent easement in this case – a materially more significant entitlement than the time-bound right it held pursuant to its 1996 Letter of Agreement.

Expropriation is neither an automatic nor often an appropriate response to a difficult negotiation between two sophisticated commercial parties. The OEB disagrees with Impala that the Original Decision results in a "leverage opportunity for landowners driven by non-market factors removed from land costs"[15]. Impala's argument presupposes the existence of a vested right to expropriation – which is false. To the extent there could exist any "leverage opportunity" in the current circumstance, it would be the result of the OEB interfering in a private commercial negotiation between two commercial parties where it does not have the legislative authority to do so.

As demonstrated by the evidence underpinning the Original Decision, commercial negotiations can sometimes be difficult. While the OEB acknowledges that such circumstances may be difficult, the mere refusal of an offer (or offers) during a commercial contractual negotiation – however generous it/they may be – does not, on its own, constitute grounds to warrant the use of one of the "ultimate exercises of government authority", nor does it serve to extend the OEB's jurisdiction. Making the opposite finding in the current case, would also be incongruent with the case law: "the power of an expropriating authority should be strictly construed in favour of those whose rights have been affected"[16].

[13] North Star's Submission, para. 69, p. 20
[14] *Toronto Area Transit Operating Authority v. Dell Holdings Ltd.,* 1997 CanLII 400 (SCC), [1997] 1 SCR 32, <https://canlii.ca/t/1fr5r>, para. 20
[15] Argument-in-Chief, para 11, pp. 6-7
[16] *Toronto Area Transit Operating Authority v. Dell Holdings Ltd.,* , para. 20

3.2 Did the Original Panel make a clear and material error in its interpretation of paragraph 99(1)2?

Original Decision

The Original Decision held that Impala is not eligible to seek expropriation under paragraph 99(1)2 of the Act because it found that the work Impala proposed to do on its line was not reinforcement, contrary to Impala's argument. Instead, the Original Panel found that the work was ordinary maintenance of a transmission line and that maintenance was not included in paragraph 99(1)2.

The evidence showed that Impala intends to carry out ongoing activities to maintain the integrity, operation, and reliability of the Impala Line. The Original Decision found that these are routine maintenance activities that electricity transmission line operators regularly perform and do not constitute reinforcement. The transmission line would therefore not require leave to construct approval under section 92 of the Act.

While the Act does not define "maintenance", "construction", "expansion" or "reinforcement", the Original Decision stated that reinforcement involves a material upgrade to a transmission line, such as increasing its capacity, rather than preserving existing infrastructure. The Original Decision noted that past leave to construct approvals for reinforcement have involved significant upgrades, such as converting a line from 115 kV to 230 kV. The Original Decision also referred to the OEB's *Transmission System Code*, which treats maintenance and reinforcement as distinct concepts. Because Impala's proposed activities do not involve construction, expansion, reinforcement, or a new interconnection, the Original Decision determined that Impala does not meet the eligibility requirements for expropriation under paragraph 99(1)2 of the Act.

Submissions

In its argument-in-chief, Impala stated that the Original Panel erred when it found that it was ineligible under paragraph 99(1)2 because its intended work does not amount to reinforcement under the Act and argued that the Original Decision's findings produce an absurd consequence. Impala submitted that the Original Decision means that Impala has no ability to seek expropriation other than through proposing a substantive system upgrade. According to Impala, this places an undue regulatory burden on it, in addition to undue costs and delays, as it would need to submit another application to the OEB for leave to construct when it believes that the expropriation is in the public interest.

Impala argued that a liberal interpretation of section 99 is consistent with the OEB's statutory objectives and allows successors of historical infrastructure to access the remedial benefits provided under section 99. Impala submitted that subsection 99(1) was not drafted to exclude Impala and other owners of private lines built before 1998 from access to subsection 99(1) strictly based on the type of work that needs to be done or the legislation that it was authorized under.

North Star submitted that Impala's argument does not reveal any clearly identifiable material error in the Original Decision and supported the OEB's findings in the Original Decision.

North Star noted the plain language of paragraph 99(1)2 requires an intention to "construct, expand or reinforce" a transmission line. North Star pointed out the interplay with section 92 of the Act which states that no person may construct, expand or reinforce a transmission line without leave from the OEB, with certain exceptions. While not a defined term in the Act, North Star argued that the meaning of "reinforce" is evident from the plain meaning of the word, as well as from section 92 which suggests that reinforcement goes beyond like-for-like reconstruction or relocation. North Star also pointed to the *Transmission System Code* which uses reinforcement and maintenance as separate concepts

North Star stated that if the legislature had intended for parties to be able to apply for the authority to expropriate for regular maintenance, then it would have stated this clearly. Further, North Star noted that in response to interrogatories asking whether Impala intended to extend, expand, or reinforce the Impala Line, Impala stated only that it "continues to maintain the integrity of the Impala Line by replacing any damaged or worn aspects of the electrical infrastructure".[17] North Star argued that the Original Panel's Decision, that Impala was not eligible because it had not demonstrated an intention to "reinforce" the line, was grounded on the evidence, including Impala's statements.

North Star argued that Impala's interpretation of the Original Decision, namely that it should be required to propose an unnecessary upgrade to be eligible to apply for expropriation, is not correct as the criteria stated in paragraph 99(1)2 is intended to apply to persons with an intention to construct, expand, or reinforce a transmission line.

[17] EB-2025-0286, Impala Response to North Star Interrogatory 1(d)

Findings

The OEB finds that the Original Panel's interpretation of paragraph 99(1)2 does not contain a clear and material error and is consistent with the established approach to statutory interpretation. The OEB finds that there is nothing absurd or inefficient about limiting leave to construct and the extraordinary remedy of expropriation to situations of construction, expansion, and reinforcement, and not to maintenance.

The OEB agrees with the Original Panel that the terms "maintenance" and "reinforcement" are distinct terms and not synonymous. As noted by the Original Panel, the *Transmission System Code* appears to consider maintenance and reinforcement to be different things. The OEB also notes that subsection 103(1) of the Act also uses the terms "maintaining" and "reinforcement" as separate and distinct concepts. The Original Panel adopted an interpretive approach anchored in the text of the statute and the plain meaning of the words. Further their approach was consistent with the requirement to strictly construe expropriation provisions.

The OEB finds that the Original Panel's Decision led to an efficient outcome. The Original Panel noted that if maintenance was synonymous with reinforcement, then every transmission company that wanted to maintain its lines would have to apply for leave, which would inundate the OEB. This outcome would be undesirable for regulatory efficiency reasons.

Impala is correct in pointing out that the result of the Original Decision is that Impala cannot use Part VI to obtain expropriation to maintain its line and that it cannot use the power of expropriation to resolve its dispute with North Star. As noted above, the OEB is not persuaded that this is an inefficient or absurd outcome.

3.3 Is it necessary to consider public interest and subsection 99(5)?

Original Decision

As the Original Decision determined that Impala did not meet the eligibility criteria to seek expropriation under subsection 99(1) of the Act, it did not address subsection 99(5) of the Act.

Submissions

In its argument-in-chief Impala stated that the Original Decision did not address the public interest criteria under subsection 99(5) of the Act, and so Impala submitted that the public interest criteria are met and the Decision should be varied to reflect this.

Impala pointed to the OEB's statutory objectives regarding economic efficiency and economic growth which are facilitated by the line providing power to the Lac Des Iles Mine.

North Star submitted that as Impala is ineligible to apply for expropriation authority under subsection 99(1), there is no need for the OEB to consider questions regarding public interest under subsection 99(5).

Regardless of its position, North Star stated that the proposed expropriation is not in the public interest as the line does not serve the public, and Impala has announced plans to cease operation of the mine in the summer of 2027. North Star argued that Impala's arguments around economic growth are not valid as subsection 99(5) only deals with whether the expropriation requested in the application is in the public interest, and, in this case, does not assess whether the mining industry is important to Ontario's economy.

Findings

As the OEB found that the Original Decision did not contain a clear and material error in its interpretation of subsection 99(1) of the Act, it therefore finds that there is no need for it to consider the public interest test in subsection 99(5) of the Act.

The OEB agrees with the Original Panel's Decision and North Star's argument[18] that, only if the applicant satisfied the eligibility requirements under subsection 99(1) of the Act, must the analysis of public interest under subsection 99(5) be undertaken.

As Impala does not meet the eligibility criteria to seek expropriation under section 99 of the Act, the Original Decision did not need to decide whether the proposed expropriation is in the public interest.

[18] North Star's Submission, para 12, p. 3

4 CONCLUSION

For the reasons set out above, the OEB does not find any clear and material errors in the Original Decision and agrees with the findings contained therein. The Motion is therefore denied.

5 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. North Star Forestry Ltd. shall file with the OEB and forward to Impala Canada Ltd. its cost claim in accordance with the OEB's *Practice Direction on Cost Awards* on or before **October 15, 2026**.

2. Impala Canada Ltd. shall file with the OEB and forward to North Star Forestry Ltd. any objections to the claimed costs of North Star Forestry Ltd. on or before **October 22, 2026**.

3. If Impala Canada Ltd. objects to North Star Forestry Ltd.'s cost claim, North Star Forestry Ltd. shall file with the OEB and forward to Impala Canada Ltd. its response, if any, to the objection on or before **October 29, 2026**.

4. Impala Canada Ltd. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto **October 8, 2026**

ONTARIO ENERGY BOARD

Ritchie Murray

Digitally signed by Ritchie Murray
Date: 2026.10.08 12:18:01 -04'00'

Ritchie Murray
Registrar